

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN PAUL TORRES, JR.,

02-CV-1126-BR

Plaintiff,

OPINION AND ORDER

v.

JEAN HILL, LANNY RYALS, and
IAN DUNCAN,

Defendants.

PAUL JOHN TORRES, JR.
6281641
Two Rivers Correctional Institution
82911 Beach Access Road
Umatilla, OR 97882

Plaintiff, *Pro Se*

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BROWN, Judge.

This matter comes before the Court on Defendants' Motion to Dismiss for Failure to Prosecute (#97). For the reasons that follow, the Court **GRANTS** Defendants' Motion.

BACKGROUND

Plaintiff Paul John Torres, Jr., brought this action pursuant to 42 U.S.C. § 1983 and alleged Jean Hill, Lanny Ryals, and Ian Duncan, M.D., violated Plaintiff's Eighth Amendment right to medical treatment. Defendants Hill and Ryals moved for summary judgment.

On August 7, 2006, the Court issued an order granting Plaintiff's Motion for Leave to Substitute the Estate of Ian Duncan. On August 14, 2006, the copy of the Court's Order sent to Plaintiff was returned to the Court as undeliverable.

On September 21, 2006, the Court issued a Scheduling Order. On September 29, 2006, the copy of the Court's Order sent to Plaintiff was returned to the Court as undeliverable.

On December 21, 2006, Defendants filed a Motion to Dismiss this matter for failure to prosecute.

DISCUSSION

Defendants seek an order dismissing this matter for failure to prosecute on the grounds that Plaintiff has "failed to comply

with various deadlines established by the Court" and "has failed to keep the Court advised of his current address in violation of Local Rule 83.10." Defendants do not identify the deadlines they contend Plaintiff has not complied with.

Pursuant to Federal Rule of Civil Procedure 41(b), the Court may dismiss an action for failure to prosecute or failure to comply with a court order. See *Malone v. United States Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987). The Court must weigh five factors when considering whether to dismiss an action under Rule 41(b):

"(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions."

Id. (quoting *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986)). "It is not necessary for a district court to make explicit findings to show that it has considered these factors." *Id.* (citing *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)).

Plaintiff has failed to comply with Local Rule 83.10 which requires parties to file a notice of change of mailing address with the Court nor has Plaintiff had any contact with the Court since August 2006.

In light of the foregoing, and in consideration of the appropriate factors, the Court concludes dismissal without

prejudice is appropriate.

CONCLUSION

For these reasons, the Court **GRANTS** Defendants' Motion to Dismiss for Failure to Prosecute (#97) and dismisses this action without prejudice.

IT IS SO ORDERED.

DATED this 2nd day of February, 2007.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge